

STATE OF VERMONT
COMMISSIONER OF TAXES

IN RE: [Taxpayer]
School Property Tax
ATC #15-82

DETERMINATION

Introduction

A hearing was held [Date], on the taxpayer's appeal of the Department's denial of [the taxpayer's] [Year 4] and [Year 5] renter rebates.

[Deleted]

Findings of Fact

1. Taxpayer claimed a renter rebate for [Year 5]. Upon review of Taxpayer's claim and available records, the Department determined that [Taxpayer's] son was a co-tenant. When his income was taken into account, the amount of rebate available to Taxpayer was reduced to zero. The Department denied the [Year 5] claim. The Department then recalculated Taxpayer's [Year 4] renter rebate, which had already been paid to Taxpayer. The Department assessed Taxpayer for the [Year 4] overpayment of [\$], plus penalty and interest. Taxpayer appeals the Department's actions on [Taxpayer's] [Year 4] and [Year 5] renter rebate claims. The specific facts are as follows:

2. In [Year 6], [Auditor] reviewed Taxpayer's [Year 5] claim for rental of a unit at [Address]. State's Exhibit ("Ex.") 1. She saw that rent paid was [\$], while Household Income was [\$]; and the Landlord Certificate for the claim showed a second renter for that unit, [Renter]. Id. The declared rent at approximately 70 percent of declared Household Income was an indicator requiring further research by the Department. The Auditor reviewed Department records for Taxpayer, and found that from [Year 1] until late [Year 3], Taxpayer's declared rent of [\$] per month was reasonable for the amount of declared Household Income, and the Landlord Certificates for those claims showed only one renter, Taxpayer. But for the last four

months of [Year 3], the rent address changed and the rent amount jumped to [\$] per month at the new address, and the Landlord Certificate for that new address included a second renter, [Renter]. State's Ex. 7, 8, 9. Taxpayer's new address from the last four months of [Year 3] through [Year 5] matched the address in Department records for [Renter] for that period. State's Ex. 10, 11.

3. The Auditor checked internal Department records to see whether [Renter] had income that should have been reported as part of the Household Income on Taxpayer's renter rebate claims. [Auditor] found that [Renter] had not yet filed income tax returns for [Year 4] or [Year 5]. [Auditor] checked Department of Labor records to determine whether [Renter] had wages for those years, and found that [Renter] did. State's Ex. 6;

4. The Auditor checked Department of Motor Vehicle records, which confirmed that [Renter]'s address for [Year 5] was [Address], the same address as shown on Taxpayer's [Year 5] renter rebate claim. State's Ex. 2, 3, 4, 5.

5. The Auditor recalculated Taxpayer's [Year 5] renter rebate by adding into the Household Income a portion of [Renter's] income. [Auditor] only added a portion of [Renter's] income, so that the Department would not divulge [Renter's] actual income amount to Taxpayer. The portion added was just the amount which brought Household Income up to the level at which no rebate was allowed. On [Date], the Auditor sent Taxpayer a letter notifying [Taxpayer] of the denial of [Taxpayer's] [Year 5] renter rebate claim. State's Ex. 12.

6. The Auditor then examined Taxpayer's [Year 4] renter rebate claim, and found that the reported Household Income of [\$] was again too low to reasonably support the amount of rent paid at [\$]. State's Ex. 13.

7. Department records showed that a different Department Auditor, [Auditor #2], had earlier reviewed Taxpayer's [Year 4] renter rebate claim, in [Year 5]. Auditor [#2] had sent Taxpayer a letter on [Date], regarding that [Year 4] renter rebate claim, inquiring why no income from [Renter] was included in the declared Household Income. State's Ex. 14. Taxpayer had responded in an email on [Date], that [Taxpayer] lived at that address [alone], that [Renter] is [Taxpayer's] son and is an interstate truck driver who "occasionally would stay a night or two at my place." State's Ex. 15. [Taxpayer] stated that [Renter's] daughter lived with Taxpayer at this address, and for that reason, the landlord insisted that the girl's father be on the lease agreement. Auditor [#2] accepted Taxpayer's statements and allowed the [Year 4] renter rebate claim.

8. Auditor [#1], reviewing Taxpayer's [Year 4] claim in [Year 6], saw Auditor [#2]'s letters and email exchange with Taxpayer from [Year 5]. Auditor [#1] then reviewed employment records from the Department of Labor. State's Ex. 6. The employment records showed that Taxpayer was consistently employed by [employer] from [Date] through [Date], and also showed [Renter]'s income amounts. State's Ex. 6, 17.

9. Based on the Landlord Certificates, the Department of Labor wage records, and the address records for Taxpayer and [Renter], Auditor [#1] sent Taxpayer a notice that [Taxpayer's] [Year 4] Household Income had been corrected to include a portion of [Renter's] income, and that the resulting renter rebate had been reduced to [\$]. State's Ex. 20. On [Date], the Department sent Taxpayer a notice of assessment for repayment of the [Year 4] renter rebate, in the amount of [\$], plus interest and a ten percent penalty. State's Ex. 21. A portion of the [Year 4] and [Year 5] rebates ([\$] and [\$]) had also been applied to Taxpayer's [Year 4] and [Year 5] income tax liabilities, and Taxpayer was therefore also billed back for those income tax liabilities.

10. Taxpayer timely appealed the denial of [Taxpayer's] [Year 4] and [Year 5] renter rebate claims and resulting assessments. Id. In [Taxpayer's] appeal letter, Taxpayer stated that [Taxpayer] pays the rent for [Taxpayer's] address, [Taxpayer's] son does not pay rent, and "We have had and continue to have separate incomes and separate households." Id. In [Taxpayer's] appeal letter, Taxpayer refers to [Taxpayer's] telephone conversation with [Auditor #1], on [Date]. Auditor [#1] testified that in that telephone conversation Taxpayer stated that [Taxpayer's] son lived elsewhere in [Town], but that Taxpayer did not provide the Department with [Taxpayer's] son's other address in [Town].

11. The Department offered evidence of [Renter's] [Year 4] and [Year 5] income and tax liabilities, and late-filed returns. State's Ex. 26, 27. The hearing officer asked if information regarding a separate taxpayer could be disclosed in Taxpayer's hearing. The Department attorney stated that it was necessary to disclose the information for tax administration purposes. The hearing officer allowed the exhibits into evidence to corroborate Auditor [#1]'s testimony for tax administration purposes, but with Taxpayer's acquiescence, the Department attorney did not provide to Taxpayer copies of the documents disclosing [Renter's] income.

12. Auditor [#1] testified that [Renter] declared [Renter's] mailing address on [Renter's] [Year 4] and [Year 5] income tax returns as the same address as on Taxpayer's renter rebate claims, and that [Renter] claimed a filing status as head of household, naming [Renter's] daughter as [Renter's] dependent, for both years. Id. Auditor [#1] testified that [Auditor #1's] understanding of Federal income tax law was that head-of-household status required that the taxpayer have a dependent and be responsible for more than half the cost of the dependent's housing and that the dependent reside with the taxpayer for more than half the year. State's Ex. 28.

Discussion and Conclusions of Law

Vermont's renter rebate program limits the portion of income that low-income renters must pay toward their rent. The lower the "household income" of the claimant, the greater the rebate amount, up to a maximum rebate of \$3,000 each year. 32 V.S.A. §§ 6066(b), 6067. No rebate is available to renters with household income above \$47,000. 32 V.S.A. § 6066(b).

"Household income" includes the modified adjusted gross income of the claimant "and such other persons as resided with the individual in the principal dwelling at any time during the taxable year." 32 V.S.A. § 6061(4)(A).

In Taxpayer's [Year 4] and [Year 5] rebate claims, [Taxpayer] included only [Taxpayer's] own income on the household income schedule. Taxpayer testified that [Taxpayer's] son is a truck driver and is not in the home for much of the year. Nonetheless, the Landlord Certificates provided by Taxpayer's landlords for [Taxpayer's] renter rebate claims, as well as Tax Department records, and records of the Department of Motor Vehicles and the Department of Labor, show that [Taxpayer's] son's home address in [Year 4] and [Year 5] was also Taxpayer's home address. There was also no evidence of any other residential address for the son during those two years. In addition, Taxpayer's son declared to the Federal government that he was the "head of household" in both [Year 4] and [Year 5], naming his daughter as his dependent, meaning that he contributed more than half the cost of her housing and that she resided with him for more than half the year. 26 U.S.C. § 152.

From this information, the Department correctly concluded that Taxpayer's home was also [Taxpayer's] son's home, and as a result, his income had to be included in the household income in calculating Taxpayer's renter rebates.

Prior to this assessment, the Department had accepted Taxpayer's statements regarding


[Taxpayer's] [Year 4] renter rebate and allowed that claim. The Department is not bound by that action, because it was not based on full information about the case. Nonetheless, the Department's assessment related to the [Year 4] rebate is abated. Based on the Department's further investigation of the case, the assessment related to the [Year 5] renter rebate claim is affirmed.

Dated [redacted], at Montpelier, County of Washington, State of Vermont.

State of Vermont
Department of Taxes

A handwritten signature in cursive script, appearing to read "Emily Bengtson", written over a horizontal line.

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Mary N. Peters", written over a horizontal line.
Mary N. Peters
Commissioner of Taxes

Date:

